

No. 15,354
United States Court of Appeals
For the Ninth Circuit

A. E. STOKES and ESTELLE STOKES,

Appellants,

vs.

JAMES H. REEVES and ISHAM P. NELSON,
Jr., doing business as Reeves and
Nelson,

Appellees.

Appeal from the United States District Court for the
District of Montana, Billings Division

APPELLEES' PETITION FOR REHEARING

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JUN 29 1957

PAUL P. O'BRIEN, CLERK

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Come now Appellees, James H. Reeves and Isham P. Nelson, and present this their Motion for Rehearing by this Honorable Court and for cause would show as follows:

That although Appellees may have been amiss in not including the "Findings of Facts and Conclusions of Law" in the Record on Appeal, still the Honorable Charles N. Pray, United States District Judge who tried the case below actually did, at the conclusion of the Testimony, make such Findings of Fact and Conclusions of Law, which were dated, signed by said Court, and filed September 4, 1956, which Findings of Fact and Conclusions of Law were as follows:

**In the District Court of the United States in and for the
District of Montana, Billings, Montana**

JAMES H. REEVES and ISHAM P.
NELSON, JR., DBA REEVES &
NELSON,

Plaintiffs,

v.

A. E. STOKES, and wife,
ESTELLE STOKES

Defendants.

**Civil Action
No. 1570**

**FINDINGS OF FACT
and
CONCLUSIONS
OF LAW**

Filed Sept. 4, 1956
E. WARREN TOOLE, *Clerk*
By C. G. KEGEL, *Deputy*

This cause came on regularly for trial at the Federal Building at Billings, Montana, on December 5, 1955, before the Court, sitting without a jury, and the Court having heard all of the evidence introduced in said cause, and being fully advised in the premises, finds the facts and states the conclusions of law, as follows:

FINDINGS OF FACT

1. That this Court has jurisdiction of the above entitled cause upon the basis of diversity of citizenship and the amount in controversy, in that plaintiffs are citizens of Dallas, Texas, and that the defendants were at the time of the commencement of the action, citizens of Sidney, Montana, and that the amount in controversy, consisting of the claim of the plaintiffs made in good faith, exceeds, exclusive of interest and costs, the sum of \$3,000.00.

2. That the plaintiffs were employed by the defendants for the purpose of preparation of certain Income Tax Returns of the defendants, for which services the defendants agreed to pay the reasonable value thereof, and that the plaintiffs

furnished said services for a period of several years prior to the month of July, 1953.

3. That the reasonable worth and value of said services performed by the plaintiffs at the request of the defendant, was in the sum of \$2,250.00.

4. That payment for said services was due from the defendants to the plaintiffs by the month of July, 1953, but that the defendants paid on said account the sum of \$250.00 only, leaving a balance due as of the month of July, 1953, in the sum of \$2,000.00.

5. That a reasonable sum to be allowed to the Plaintiffs for the services of their attorney in this suit on their behalf is in the sum of \$400.00.

6. That the plaintiffs and the defendants did not enter into such agreement as is set forth in the Second Defense of the defendant, Estelle Stokes.

7. That the plaintiffs and the defendants did not enter into such an agreement as is set forth in the Second Defense of the defendant, A. E. Stokes.

CONCLUSIONS OF LAW

1. That the defendants owe the plaintiffs for professional services rendered by the plaintiffs unto the defendants the sum of \$2,000.00, together with interest thereon at the rate of six per cent (6%) per annum, from the 31st day of July, 1953, until paid.

2. That in addition thereto the plaintiffs are entitled to recover of and from the defendants a reasonable attorney's fee in the sum of \$400.00, together with the costs of suit herein expended.

IT IS SO ORDERED, and that judgment be entered in accordance herewith.

Dated September 4th, 1956.

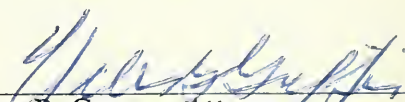
CHARLES N. PRAY
United States District Judge

ARGUMENT

In such Findings the Trial Court concluded the Appellees were entitled to a Judgment against the Defendants for \$2,000.00 for their professional services, together with interest at 6% from July 31, 1953, plus attorney's fees in the amount of \$400.00.

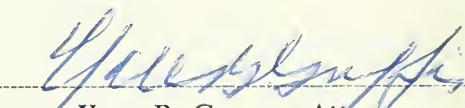
Appellees pray this Honorable Court to reform such Judgment heretofore rendered by the Trial Court in accordance with the decision heretofore made by this Court on Appeal, and further pray that this Court render Judgment against A. E. Stokes, for \$2,000.00 plus interest thereon at 6% from July 31, 1953, until paid, plus \$400.00 attorney fees, together with Costs, and for such other relief as Appellees may be entitled.

Respectfully submitted,


YALE B. GRIFFIS, Attorney
Attorney for Appellees

CERTIFICATE

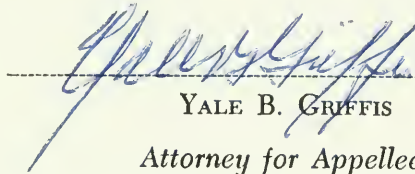
I, Yale B. Griffis, one of the Counsel for Appellees herein, hereby certify that in my judgment this Petition for Rehearing is well founded and that it is not interposed for delay.


YALE B. GRIFFIS, Attorney

CERTIFICATE OF SERVICE

The undersigned attorney of record for James H. Reeves and Isham P. Nelson, plaintiffs-appellees, hereby certifies that he has on this date sent by mail to Herbert W. Clark, 1110 Crocker Building, San Francisco 4, California, attorney for defendants-appellants, A. E. Stokes and wife Estelle Stokes, four copies of this brief.

Dated at Dallas, Texas, this the 27th day of June, 1957.


YALE B. GRIFFIS
Attorney for Appellees

